IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of the Case.

Criminal Appeal No. 1131 of 2001 decided on 19.06.2003

Hari Ram and another Vs. State of uttaranchal.

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 19-06-2003 Initial of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved

Criminal appeal No.1131 of 2001.
(Old no. 1078 of 1997)

Hari Ram and another - Appellants.

Versus

State of Uttaranchal - Respondent

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Hon. P.C. Verma, ACJ.
Hon'ble Irshad Hussain

(Delivered by Hon. Irshad Hussain, J.)

This is an appeal against the judgment and order dated 21.04.1997 passed by the Sessions Judge, Nainital in session trial no.25 of 1995 convicting the appellants under section 302 read with section 34 of the I.P.C.; 307 read with section 34 of the I.P.C. and 506 of the I.P.C. and sentencing them to imprisonment for life; rigorous imprisonment for five years and rigorous imprisonment for one year respectively under the said three counts. The sentences were directed to run concurrently.

The case of the prosecution as unfolded from the prosecution evidenced is that on 20.096.1994 at about 6 P.M. appellant Hari Ram and deceased Jiwan Singh returned to their village Putgaon from Haldwani by Kumaon Motor Owners' Union Ltd. bus. When all the passengers got down the bus left for onward journey and soon after appellant Hari Ram took deceased Jiwan Singh towards the side of the shop and gave him knife blows. Khushal Singh (P.W.2) the brother of the deceased came out form the shop and wanted to rescue his brother, but he was also inflicted injuries on the back by Smt. Anandi Devi, the wife of the appellant Hari Ram who was wielding a 'Daranti' (sickle) and had appeared there on a call given by the appellant. He was also given knife blow by the appellant. Mohan Singh (P.W.1) minor son of the deceased who was there at the scene of the occurrence went to other family members. In the way informant Bhim

Singh (P.W.3) met him and he was told about the incident. Bhim Singh reached the spot of incident and found both Jiwan Singh and Khushal Singh injured lying there. Bhim Singh was also told about the incident by these injured. Jiwan Singh soon after succumbed to his injuries at the spot.

Bhim Singh got prepared a written report (Ext.ka.1) and filed it with the Patti Patwari Churigar, tehsil Dhari district Nainital and on the basis of the written report check F.I.R., Ext.ka.9, was recorded at 8:00 P.M. the same day. Patti Patwari Prem Singh Rautela (P.W.7) took up the investigation of the crime and recorded the statement of informant Bhim Singh. He went to the scene of the occurrence and held inquest on the dead body and prepared inquest report, Ext.ka.11, and other relevant documents. The packed and sealed dead body was sent for postmortem which was performed by Dr. A.K.Pant on 22.06.1994. Other formalities of the investigation such as seizure of sample of blood stained and plain earth vide memo., Ext.ka.4 were completed. Appellants were arrested and searched vide memo. Ext.ka.5 and Ext. ka.6 and on the pointing of appellant Smt. Anandi Devi weapon of assault, 'Daranti' was seized vide memo., Ext.ka.7. On completion of investigation, charge-sheet, Ext.ka.19 was submitted against the appellants.

Appellants pleaded not guilty and contended that they have been falsely implicated due to enmity.

At the trial in order to bring home guilt to the appellants, prosecution relied upon the evidence of seven witnesses, out of which Mohan Singh (P.W.1) and injured Khushal Singh (P.W.2) are the witnesses of the actual occurrence and they supported the prosecution version. Informant Bhim Singh (P.W.3) proved F.I.R. (Ext.ka.1). He gave out that when he reached the scene of occurrence he found his brother Jiwan Singh lying in pool of blood near the shop and another brother injured Khushal Singh was also lying nearby. They told him that they have been caused injuries by knife by appellant Hari Ramand and that Khushal Singh had also been assaulted by appellant Smt. Anandi Devi by means of 'Daranti'.

Dr. A.K.Pant (P.W.4) performed postmortem on the dead body of deceased Jiwan Singh at about 1:45 P.M. on 22.06.1994 and prepared postmortem report (Ext.ka.2). Following antemortem injuries were detected:

(1) Incised wound 3 cm. x 1 cm. x muscle deep on left uppermost part of abdomen. Collated blood present;
(2) Punctured wound 3.5 cm. x 1.5 cm. x cavity deep on left side of abdomen;

On exploration of abdominal cavity, cavity was found full of blood and there were incised wounds on both the kidneys.

A loop of small intestine with blood was protruding out of the wound.

On internal examination peritoneum was found ruptured corresponding to the punctured wound referred above.

In the opinion of the medical officer death occurred as a result of injuries to the left kidney, shock and haemorrhage and that the injuries were sufficient in the ordinary course to cause death. He also opined that the ante-mortem injuries were probably caused at about 6:00 P.M. on 20.04.1994 by knife.

Dr. K.K. Bhatt (P.W.5) medically examined injured Khushal Singh at 8:40 P.M. on 21.06.1994 and prepared injury report (Ext. Ka.3). Injuries detected are:-

(1) Incised wound 2 cm. x 1 cm. x muscle deep over the back of neck, 6 cm. above and to the right of the 7th cervical prominence;
(2) Incised wound 2 cm. x 1 cm. x muscle deep over right side back of chest;
(3) Incised wound 2 cm. x 1 cm. x muscle deep over lateral part of upper 1/3rd of right thigh.

In the opinion of the medical officer these injuries were caused by sharp edged weapon such as 'Daranti' and knife at about 6:00 P.M. on 20.06.1994.

Bhawan Singh (P.W.6) testified that sample of blood stained and plain earth was seized from the scene of the occurrence by the Patti Patwari vide memo. (Ext.Ka.4). He also identified these samples as material Exts. I to IV. He is also witness of the recovery of 'Daranti' material Ext. VI on the pointing of appellant Smt. Anandi Devi.

Prem Singh Rautela (P.W.7) is the Patti Patwari Churigar, Tahsil Dhari and he had investigated the case. He proved the check F.I.R.

(Ext.ka.9) and copy of the general diary report regarding registration of the case (Ext.ka.10) besides other documents of inquest referred to earlier. He also proved that 'Daranti' was recovered on the pointing of appellant Smt. Anandi Devi vide memo. (Ext.ka.9). He also proved other steps taken towards investigation of the case and proved site-plan (Ext.ka.17) and charge-sheet (Ext.ka.19) filed against the appellants.

Learned Sessions Judge on the basis of his appreciation of the material on record accepted the claim of the prosecution by observing that both the eye witness and injured named above are wholly reliable witnesses and form their evidence the manner in which the incident took place and that the appellants were the assailants of the victims, had been established beyond doubt. He also took into consideration the other evidence referred above and finding the appellants guilty of the charges convicted and sentenced them as mentioned above.

Heard Sri D.S.Rawal, learned counsel for the appellants and the learned Additional Government Advocate.

Learned counsel for the appellants submitted that the learned Sessions Judge fell in error in placing reliance on the evidence of child witness who could have easily been tutored in view of death of his father deceased Jiwan Singh and injuries sustained by his uncle Khushal Singh.

We have carefully perused the statement of Mohan Singh (P.W.1) and found that despite lengthy cross-examination he had not given any indication of tutoring as to the evidence in this case against the appellants. The occurrence took place near the shop of the deceased where the appellant Hari Ram and deceased Jiwan Singh got down from the bus at about 6:00 P.M. on 20.06.1994 and soon after this appellant took the deceased by the side of the shop and assaulted him by knife. The presence of the child witness at that place is quite natural and there is nothing in his cross-examination as may in any way suggest that he had no reason to be there at that shop at that time. Witness categorically stated that when appellant Hari Ram took his father to the side of the shop the appellant was not carrying the knife in his hand but thereafter took out the knife from the pocket of wearing apparel (Bandi) and gave two knife blows on the person of his father. Witness also gave out hat his uncle Khushal Singh had appeared at the

scene of the occurrence after his father had already fallen on the ground after receiving injures. Appellant Smt. Anandi Devi was called upon by appellant Hari Ram to come there and appellant Anandi Devi reached there with 'Daranti' and assaulted his uncle Khushal Singh by giving blows near the neck. Appellant Hari Ram also gave knife blow to Khushal Singh who thereafter also fell on the ground at a short distance form Jiwan Singh. It is thus obvious that the sequence of events and manner of the incident as given by the witness conform to the prosecution version and there is nothing as may in any way assail the credibility of the evidence of the witness. In the totality of circumstances of the case the learned Sessions Judge was justified in placing implicit reliance on his evidence.

Witness Khushal Singh (P.W.2) is the real brother of the deceased Jiwan Singh. His is the injured witness and therefore his presence at the time of the occurrence cannot be disputed. He was on the spot when occurrence took place and saw the appellant Hari Ram giving knife blows to his brother deceased Jiwan Singh. He rushed to the rescue of his brother and in the meanwhile at the call of the appellant Hari Ram his wife appellant. Smt. Anandi Devi came there with a sickle and assaulted him by giving blow of this weapon on his neck. Appellant Hari Ram also gave a knife blow on his thigh. It has come in the evidence of the witness that the house of appellant Hari Ram is situate at a distance of fifteen paces from the place of the occurrence and Smt. Anandi Devi had responded to the call of her husband and came there to assault him. Against this witness it was argued that due to close relationship with the deceased false evidence had been given. Cross-examination of the witness however rebut the argument of the learned counsel for the appellants and there is absolutely nothing as may in any way shake the basis version of the witness about the occurrence and the role of the two appellants in the commission of the crime.

In other words this witness has also fully supported the prosecution story that deceased Jiwan Singh received injures at the hands of the appellant Hari Ram and that he himself was also assaulted there by both the appellants.

Learned counsel for the appellants then argued that no independent witness of the occurrence was produced by the prosecution and that the

interested evidence of these two witnesses was not sufficient to bring home the guilt to the appellants. Attention was drawn to the evidence of P.W.2 who admitted that other co-villages, viz., Ramesh Boochar, Prem Ballabh Mastar and Pappu have also got down from the bus near the scene of the occurrence and since the occurrence had taken place soon thereafter these public witnesses should have been examined to support the prosecution case. The evidence of the witnesses does not indicate that these three persons remained there till the time the appellant Hari Ram took deceased Jiwan Singh by the side of the shop and assaulted him there by a knife. In view of this these co-villagers could not have been nominated as the eye witnesses of the occurrence and question of their withholding form the evidence does not arise and no adverse inference therefore could have been drawn against the prosecution.

Witness Bhim Singh (P.W.3) has lodged the report of the occurrence as he was told about the sequence of the events and manner of the occurrence by the victim themselves when the witness arrived there. He had proved the version of the written F.I.R. (Ext.ka.1) which also corroborate the evidence of the witnesses examined in the case. There can be no gain saying that medical evidence in the case also fully corroborate the ocular evidence as the medical officer Dr. A.K. Pant (P.W.4) who performed postmortem on the dead body of deceased Jiwan Singh categorically stated that ante-mortem injuries were caused by a knife probably at about 6:00 P.M. on 20.04.1994. Likewise the evidence of Dr. K.K.Bhatt (P.W.5) support the prosecution case on the point that the injuries of Khushal Singh (P.W.2) were caused at the same time on that day by sue of sickle and knife. There is nothing in the cross-examination of these medical officers as may in any way create doubt in regard to the prosecution version about the manner of sustaining of the injuries by the victims by use of these weapons. The learned Sessions Judge has considered this aspect of the matter in proper perspective and made an observation in favour of the prosecution.

It was next argued that the learned Sessions Judge wrongly convicted both the appellants for an offence of murder because appellant Stm. Anandi Devi could not have been held responsible for the homicide and further that her husband appellant Hari Ram could not have been saddled with the

responsibility of committing murder because the crime appear to have been committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel as the case was covered by exception IV of section 300 of I.P.C. There is not an iota of evidence to indicate that sudden fight or quarrel took place between the deceased and the appellant Hari Ram before the deceased was given knife blows and therefore the case was not covered by exception IV of section 300 of the I.P.C. Appellant Hari Ram had given knife blows on the vital part of the body of the victim Jiwan Singh with the intention of causing bodily injuries to be sufficient in the ordinary course of nature to cause death and therefore the case was squarely covered by clause thirdly of section 300 of I.P.C. and the charge of substantive offence of murder punishable under section 302 I.P.C. was established beyond doubt against the appellant.

The other part of the argument of the learned counsel however has force because it is in the evidence of P.W.1 and P.W.2 that appellant Smt. Anandi Devi was not initially with her husband appellant Hari Ram when deceased Jiwan Singh was assaulted by knife and she came there only on a call given by her husband appellant Hari Ram and even after reaching there while carrying a sickle no assault was made by her on deceased Jiwan Singh. It is thus obvious that there was no prior concert or meeting of minds between both the appellant in regard to the assault made on deceased Jiwan Singh. Learned counsel for the appellants in view of the conduct of the appellants and the manner of the assault submitted that appellant Smt. Anandi Devi could not have been convicted for murder of deceased Jiwan Singh with the aid of section 34 I.P.C. and her conviction as such under section 302 read with section 34 of the I.P.C. was improper. Learned counsel placed reliance on the reported decision in the case of **Badruddin Vs. State of U.P. 1998 (7) SCC 300** and **Ramshish Yadav and others Vs. State of Bihar, 1999 (8) SCC, 555.** In those cases it had been stressed that in regard to the applicability of section 34 of I.P.C. the prosecution has to establish that there was prior concert or meeting of minds between the accused persons to commit a particular offence. It was also held that the common intention can also be developed at the spur of the moment, but there must be pre-arrangement or pre –mediated concert. In the instant case

It is the prosecution case that at the time of the incident when deceased Jiwan Singh was given knife blows by the appellant Hari Ram the appellant Smt. Anandi Devi was not there at the scene of the occurrence and was also not even aware as to what had happened prior to her reaching there with sickle on the call of her husband, the appellant Hari Ram. In a situation like this the sequence of the events and the conduct of the appellants ruled out prior concert or meting of minds in regard to the commission of crime and murder of deceased Jiwan Singh. It also need to be mentioned that the deceased had received two fatal knife blows on his person before appellant Smt. Anandi Devi came into picture at the scene of the occurrence and therefore question of common intention being developed between the two appellants at the spur of moment also does not arise and in the totality of facts and circumstances of the case, appellant Smt. Anandi Devi could not have been held guilty of committing the murder of deceased Jiwan Singh with the aid of section 34 of I.P.C.

So far as the charge under section 307 read with section 34 of the I.P.C. is concerned, there appear to be no infirmity in the view taken by learned Sessions Judge as there is no substance in the argument of the learned counsel for the appellant that considering the nature of the injuries of injured Khushal Singh (P.W.2) at the most the case would fall under section 324 of I.P.C. instead of section 307 I.P.C. This injured was given blows of weapon of assault on the neck and also on the back to chest which are vital parts of the body and considering the seat of the injuries there can be no doubt that the assailants intended to causer injuries which could have been sufficient to cause the death of the victim. In other words the appellants have attempted to commit the murder of Khushal Singh and both of them have rightly been held guilty and convicted for offence punishable under section 307 read with section 34 of the I.P.C.

It has come in the evidence of P.W.1 and P.W.2 that after the assault on the victims, appellants gave out that today only two of them have been assaulted and they will not spare other members of their family and thus left the scene threatening the victims and the witnesses with dire consequences. The ingredients of criminal intimidation were also satisfied from the

material on record and the two appellants were also thus rightly held guilty and convicted for offence punishable under section 506 of I.P.C.

It was lastly argued that sentence awarded under section 307 I.P.C. to the appellants is excessive and in the circumstances of the case and the injures of the injured Khushal Singh, a lenient view should have been taken by the learned Sessions Judge. Sentences of five years' rigorous imprisonment was awarded under this count. We are however, of the view that considering the fact and the nature of the injures of the injured ends of justice will be satisfied if the sentence is reduced to three year's rigorous imprisonment under section 307 read with section 34 of the I.P.C.

For the reasons stated above, the appeal partly succeed. Conviction and sentence of appellant Smt. Anandi Devi under section 302 read with section 34 I.P.C. is set aside. Conviction and sentence to life imprisonment of appellant Hari Ram is maintained under section 302 I.P.C. Conviction of appellants Hari Ram and Smt. Anandi Devi under section 307 read with section 34 I.P.C. is maintained and by modification their sentence is reduced to three years' rigorous imprisonment. Conviction of the appellants and sentence of one year's rigorous imprisonment under section 506 of I.P.C. is maintained. All the sentences shall run concurrently.

Appellants are in jail. They shall serve out the sentences awarded to them.

Let the copy of the judgment alongwith the record of the case be sent back to the court below for compliance.

19.06.2003/B.

(Irshad Hussain, J.) **(P.C. Verma, A.C.J.)**